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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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12
13 DANIEL SANCHEZ,
14 Petitioner,
15 v.
16 DAVE DAVEY, Warden,
17 Respondent.
18

Case No. CV 15-2962 VAP (MRW)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

19 The Court vacates the reference of this action to the Magistrate Judge and
20 summarily dismisses the action pursuant to Rule 4 of the Rules Governing
21 Section 2254 Cases in the United States District Courts without prejudice.

22 * * *

23 This is a state habeas action. Petitioner was convicted in Los Angeles
24 Superior Court in February 2015 of making criminal threats. That court sentenced
25 him to a term in county jail. In his federal habeas filing, Petitioner asserted various
26 claims of error regarding his trial and his trial attorney's performance. (Docket
27 # 1, 4.)
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1 It appears from the pleading that Petitioner never presented his claims to the
2 state court of appeal or to the state supreme court. To the contrary, Petitioner
3 claims in his federal petition that “the same [trial court] judge” is currently
4 reviewing his case. (Docket # 1 at 3.)

5 Magistrate Judge Wilner issued an order after preliminary review of the
6 petition. (Docket # 3.) Judge Wilner explained the federal statutory requirement
7 that Petitioner exhaust his claims on appeal in state court before seeking federal
8 habeas relief. Judge Wilner gave Petitioner an opportunity to submit a
9 supplemental statement explaining whether Petitioner actually did seek appellate
10 review of his claims in state court before filing in this Court. (Id.)

11 Petitioner submitted a timely statement. (Docket # 4.) However, the
12 statement did not address the question of the exhaustion of Petitioner’s claims.
13 Instead, Petitioner asserted additional arguments regarding his conviction. (Id.
14 at 1-5.) In the interests of justice, Judge Wilner gave Petitioner another chance to
15 explain the procedural posture of his action. (Docket # 6.) Petitioner failed to
16 respond to the Court’s order.

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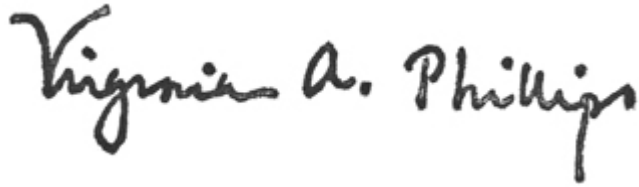
18 Petitioner’s current habeas filing fails to satisfy the exhaustion requirements
19 of federal law. Under the statute that governs federal review of habeas petitions,
20 state prisoners are required to exhaust (that is, present) their claims to the state’s
21 highest court before seeking relief in federal court. 28 U.S.C. § 2254(b)(1)(A);
22 Rose v. Lundy, 455 U.S. 509 (1982). On habeas review, the Court can only
23 consider a claim for which the state courts issued a decision that was contrary to or
24 an unreasonable application of clearly established federal law. 28 U.S.C. §
25 2254(d)(1).

26 If it “appears from the application that the applicant or person detained is not
27 entitled” to habeas relief, a court may dismiss the action without ordering service
28

1 on the responding party. 28 U.S.C. § 2243; see also Rule 4 of Rules Governing
2 Section 2254 Cases in United States District Courts (petition may be summarily
3 dismissed if petitioner plainly not entitled to relief); Local Rule 72-3.2 (magistrate
4 judge may submit proposed order for summary dismissal to district judge “if it
5 plainly appears from the face of the petition [] that the petitioner is not entitled to
6 relief”).

7 From the face of the petition, it is clear that Petitioner failed to state an
8 exhausted claim for relief. He was recently convicted in state court, and has not
9 appealed his conviction within the state court system. As a result, there is no
10 decision of the state’s highest court for this federal court to review for
11 constitutional error. Rose, 455 U.S. 509; 28 U.S.C. § 2254(d)(1). Petitioner is not
12 entitled to pursue this federal habeas action. The action is therefore DISMISSED
13 without prejudice.

14 IT IS SO ORDERED.



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16 Dated: _July 9, 2015_____

17 HON. VIRGINIA A. PHILLIPS
18 UNITED STATES DISTRICT JUDGE
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